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PATENTS



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

re application of

Chen QI et al.

CONFIRMATION NO. 1139

Serial No. 09/726,308

GROUP 1614

Filed December 1, 2000

Examiner C. Delacroix-Muirheid

CHOLESTEROL LOWERING  
SUPPLEMENT

RESPONSE

Commissioner for Patents

Washington, D.C. 20231

Sir:

This replies to the Official Action of March 26, 2002.

Responsive to the requirement for restriction,  
applicants elect Group I, claims 1-23, with traverse.

It is believed that the requirement is improper and  
should not be repeated, for the following reasons:

It is not accurate to say that the process for using  
the product as claimed can be practiced with another materially  
different product, or that the product as claimed can be used in  
a materially different process for using that product.  
Specifically, it is not accurate to say that in the instant case,  
the process of reducing serum cholesterol can be practiced with  
another materially different product such as those suggested in  
the Official Action.

Moreover, separate classification is no evidence of the  
propriety of a requirement for restriction. Classification is

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solely for the convenience of the Patent Office and the searching public, and cannot reduce an applicant's rights in any way.

Now as to the question of practicing the process with another materially different product as suggested, the following should be considered:

Claim 1 describes a composition comprising:

a. one or more phytosterols and/or phytostanols or mixtures thereof capable of reducing cholesterol absorption in the intestine;

b. a composition capable of inhibiting cholesterol biosynthesis;

c. a composition capable of increasing cholesterol metabolism,

wherein at least one of the compositions b. and c. is derived from plants.

Claim 24 describes a method of reducing serum cholesterol levels or preventing elevated blood serum cholesterol levels comprising administering to a person an effective amount of a composition comprising:

a. one or more phytosterols and/or phytostanols or mixtures thereof capable of reducing cholesterol absorption in the intestine

b. a plant derived composition of inhibiting cholesterol biosynthesis

c. a plant derived composition capable of increasing cholesterol metabolism.

It can be seen by comparison of claims 1 and 24 that the composition as used in the method of claim 24, always is within the scope of the composition as defined in claim 1. Thus, the process as defined in claim 24 cannot be practiced with another, materially different, product as described in claim 1.

Additionally, the relevance of the example provided by the Examiner, i.e. the use pyrimidine derivatives having HMG-CoA reductase inhibitory activity, is not seen.

Components with HMG-CoA reductase inhibitory activity are indeed preferentially used to inhibit cholesterol biosynthesis in applicants' invention. Both the composition (claim 1) and the composition used in the method (claim 24) contain a composition capable of inhibiting cholesterol biosynthesis (e.g. component with HMG-CoA reductase inhibitory activity), wherein claim 24 has the additional requirement of this composition being plant derived. If pyrimidine derivatives indeed are capable of reducing cholesterol biosynthesis they may be combined with the other components to form the composition as defined in claim 1. If the pyrimidine derivatives are capable of reducing cholesterol biosynthesis and are plant derived, they may be used in the method according to claim 24.

From the above, one can thus conclude that the claim directed to the process of reducing serum cholesterol cannot be


practiced with a product materially different from the composition as defined in claim 1.

Accordingly, an action on the merits of all of the claims is respectfully requested.

Respectfully submitted,

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